IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Bail Appl..No. 7449 of 2007()

CRIME NO.172/2006 OF THRITHALA POLICE STATION

PETITIONER : 1ST ACCUSED;

P.P.ABDUL JABBAR, AGED 38 YEARS,
S/O.P.P.KADER, PUTHENPEEDIKAYIL HOUSE,
THRITHALA POST, OTTAPALAM TALUK, PALAKKAD DISTRICT

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING SUB INSPECTOR OF POLICE, THRITHALA
POLICE STATION.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7449 of 2007

Dated this the 4th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner is the 1st accused. He is the husband of the defacto complainant. He faces indictment for offences punishable, inter alia, under Section 498 A I.P.C. The crime was registered on the basis of a private complaint filed before the Magistrate and forwarded to the police by the Magistrate under Section 156(3) Cr.P.C. Investigation is already complete. Final report has already been filed. The same is pending before the Judicial Magistrate of the First Class, Pattambi as C.C.345 of 2006, submits the learned Public Prosecutor .

2. The petitioner prays for issue of directions under Section 438 Cr.P.C. The learned Public Prosecutor only submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular in the ordinary course.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and

satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-